

SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

SM333954**United States Patent Application**
COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: **ADAPTIVE INSTANT MESSAGING**.

The specification of which is attached hereto.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. § 1.63(e).

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate, or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

No such claim for priority is being made at this time.

I hereby claim the benefit under 35 U.S.C. § 120 or 365(c) of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which became available between the filing date of the prior application and the national or PCT international filing date of this application:

No such claim for priority is being made at this time.

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Aldous, Alan K.	Reg. No. 31,905	Huter, Jeffrey B.	Reg. No. 41,086	Park, Ellen	Reg. No. 34,055
Anglin, J. Michael	Reg. No. 24,916	Jackson Huebsch, Katharine A.	Reg. No. 47,670	Parker, J. Kevin	Reg. No. 33,024
Arora, Suneel	Reg. No. 42,267	Jurkovich, Patti J.	Reg. No. 44,813	Perdok, Monique M.	Reg. No. 42,989
Beekman, Marvin L.	Reg. No. 38,377	Kacvinsky, John	Reg. No. 40,040	Peret, Andrew R.	Reg. No. 41,246
Bianchi, Timothy E.	Reg. No. 39,610	Kalis, Janal M.	Reg. No. 37,650	Peterson, David C.	Reg. No. 47,857
Billion, Richard E.	Reg. No. 32,836	Kalson, Seth Z.	Reg. No. 40,670	Prout, William F.	Reg. No. 33,995
Black, David W.	Reg. No. 42,331	Kaplan, David J.	Reg. No. 41,105	Reynolds, Thomas C.	Reg. No. 32,488
Brake, R. Edward	Reg. No. 37,784	Klima-Silberg, Catherine I.	Reg. No. 40,052	Schumm, Sherry W.	Reg. No. 39,422
Brennan, Leoniede M.	Reg. No. 35,832	Kluth, Daniel J.	Reg. No. 32,146	Schwegman, Micheal L.	Reg. No. 25,816
Brennan, Thomas F.	Reg. No. 35,075	Lacy, Rodney L.	Reg. No. 41,136	Scott, John C.	Reg. No. 38,613
Brooks, Edward J., III	Reg. No. 40,925	Lam, Peter	Reg. No. 44,855	Seddon, Kenneth M.	Reg. No. 43,105
Burge, Ben	Reg. No. 42,372	Lemaire, Charles A.	Reg. No. 36,198	Seeley, Mark	Reg. No. 32,299
Burtzlaff, Robert A.	Reg. No. 35,466	LeMoine, Dana B.	Reg. No. 40,062	Skabrat, Steven P.	Reg. No. 36,279
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Chadwick, Robin A.	Reg. No. 36,477	Maki, Peter C.	Reg. No. 42,832	Smith, Michael G.	Reg. No. 45,368
Clark, Barbara J.	Reg. No. 38,107	Malen, Peter L.	Reg. No. 44,894	Speier, Gary J.	Reg. No. 45,458
Clise, Timothy B.	Reg. No. 40,957	Mates, Robert E.	Reg. No. 35,271	Steffey, Charles E.	Reg. No. 25,179
Dahl, John M.	Reg. No. 44,639	McCrackin, Ann M.	Reg. No. 42,858	Stewart, Steven C.	Reg. No. 33,555
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Drake, Eduardo E.	Reg. No. 40,594	Mirho, Charles A.	Reg. No. 41,199	Su, Gene I.	Reg. No. 45,140
Embretson, Janet E.	Reg. No. 39,665	Moore, Charles L., Jr.	Reg. No. 33,742	Terry, Kathleen R.	Reg. No. 31,884
Faatz, Cynthia Thomas	Reg. No. 39,973	Muller, Mark V.	Reg. No. 37,509	Tong, Viet V.	Reg. No. 45,416
Forrest, Bradley A.	Reg. No. 30,837	Nagy, Paul	Reg. No. 37,896	Viksins, Ann S.	Reg. No. 37,748
Gambri, Owen J.	Reg. No. 36,143	Nama, Kash	Reg. No. 44,255	Wells, Calvin E.	Reg. No. 43,256
Gorrie, Gregory J.	Reg. No. 36,530	Nelson, Albin J.	Reg. No. 28,650	Winkle, Robert G.	Reg. No. 37,474
Gortych, Joseph E.	Reg. No. 41,791	Nicholson, Lea A.	Reg. No. P-48,346	Woessner, Warren D.	Reg. No. 30,440
Greaves, John N.	Reg. No. 40,362	Nielsen, Walter W.	Reg. No. 25,539	Wong, Sharon	Reg. No. 37,760
Haack, John L.	Reg. No. 36,154	Novakoski, Leo V.	Reg. No. 37,198	Yates, Steven D.	Reg. No. 42,242
Harris, Robert J.	Reg. No. 37,346	Padys, Danny J.	Reg. No. 35,635	Young, Charles K.	Reg. No. 39,435
Hill, Stanley K.	Reg. No. 37,548				

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to **Schwegman, Lundberg, Woessner & Kluth, P.A.** at the address indicated below:

P.O. Box 2938, Minneapolis, MN 55402
Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : **Nikhil M. Deshpande**

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Signature: _____

Nikhil M. Deshpande

Date: **8/16/01**

Full Name of joint inventor number 2 : **Jay G. Gilbert**

Citizenship: **United States of America**

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Portland, OR 97223

Signature: _____

Jay G. Gilbert

Date: **8/16/01**

Attorney Docket No.: 884.491US1
Serial No. not assigned
Filing Date: not assigned

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 3 : Todd L. Harrison ^{D. TDH}

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Post Office Address: 16315 NW Norwich Ct.
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Signature: _____

Todd L. Harrison
D. TDH

Date: _____

08/23/2001

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§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.